IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.892 OF 2005

Late Mr.Yeshwantrao Shankarrao Bhosale
thrugh his legal heirs,
a) Smt.Leelawati Yeshwantrao Bhosale
and ors. .. ..Appellants

Versus

1.Shri Mahadeo Balwant Gaikwad
(deceased) through his legal heirs
a) Bhiku Mahadeo Gaikwad and Ors. ..Respondents

Mr.A.Y.Sakhare with Mr.Siddharth Karpe, Ms Varsha Palav & Sarang Aradhye for appellants

Mr.S.Y.Jadhav for respndent no.1

Mr.Rajesh More and Vikram B.Malave for respondent no.2

CORAM : P.V.KAKADE, J.

DATE : 29TH AUGUST, 2005

P.C.:

1. The appellants have filed the present appeal against the judgment and order passed by Addl. District Judge, Pune dated 17th September, 2004 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Pune dated 30.9.2000 dismissing the Plaintiffs'' suit.

2. I have heard the learned counsel for all the parties. Perused the record.

3. The plaintiffs filed the suit for redemption of mortgage property situated at Aundh, Tal. Haveli, Dist.Pune. The appellants-plaintiffs came with the case that they are owners of Household property Gramp Panchayat House No.51, located in Aundhgaon. The plaintiffs were in need of amount in the year 1949. In order to satisfy the need of money the plaintiffs and their brothers defendant no.7 approached defendant no.1 and 2 and demanded sum of Rs.7000/=. It is alleged that the defendant nos.1 and 2 insisted that the suit property should be given on conditional sale in order to give the amount on loan. Accordingly, plaintiffs and defendant no.7 alleged to have executed conditional sale deed on 24.10.1949 in favour of defendant nos.1 and 2 and in regard to the suit property. As per the agreement it was decided that after 10 years the plaintiffs and defendant no.7 were to repay amount of Rs.7000/= to the defendant nos.1 and 2 and thereafter the defendant nos.1 and 2 had undertaken to re-execute the sale deed in favour of the plaintiffs. It was

alleged that the initial transaction between the parties was that of mortgage and it was mortgage by condition-sale. The possession of the suit property came to be handed over to the defendant nos.1 and 2 and subsequent defendant no.1 and 2 assigned suit property in favour of defendant no.3 by document dated 24.10.1949 and also handed over possession of the suit property to defendant no.3. Subsequently property was allotted to various city survey numbers which was entered in the name of defendant no.3. The plaintiffs had requested from time to time to defendant nos.1 and 2 and defendant no.3 for redeeming the property by executing sale deed but in vein and finally suit notice came to be served on 1.5.1959. The defendant nos.1 to 3 are alleged to have entered with defendant nos.4 4 to 5 and 8 to 11 and further make an attempt to hand over possession of the suit property and thereby showed unwillingness to redeem the suit property. Hence the suit came to be filed. The defendants contested the suit on various grounds, inter alia, submitting that the suit transaction was not that of mortgage and as such the suit is liable to be dismissed on that count alone.

. The learned trial judge adjudicated the dispute

and on the basis of available evidence came to the conclusion that the suit was barred by principles of estoppel and plaintiffs had failed to prove that they were wiling to perform their part of contract as per conditions of mortgage deed. It was further held that the plaintiffs are not entitled to possession and specific performance of contract as claimed and as such the suit came to be dismissed. The appeal was carried to the District Court. The learned Addl. District Court after hearing both the parties came to the conclusion that the findings recorded by the trial court were legal and proper and dismissed the appeal. Hence the present appeal.

4. At the outset, it must be noted that the only question which is sought to be raised in this appeal is with regard to the interpretation of the suit document, i.e. whether it was deed of mortgage or a document of sale with condition to repurchase. Time and again the Apex Court has laid down that the question involving interpretation of documents are issues of fact and therefore, cannot be entertained in the second appeal. In this regard the learned counsel for the appellants sought to put reliance on the Apex Court ruling in the

case of **Vidyadhar vs. Manikikra and anr**. reported in **AIR 1999 SC 1441**. I have critically perused the said ruling. However, it is to be noted that it is not applicable to the present set of circumstances revealed from the record. In this regard it must be noted that the Apex Court has repeatedly held that it is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. In a case where from a given set of circumstances tow inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. This rule is especially applicable when both the courts below have concurrently found that the nature of the document involved is that of sale with condition to repurchase and the plaintiffs have lost right to redeem the property, as the cause is barred by law of limitation. In view of this facts and circumstances, I am inclined to hold that it is not fit case to interfere and as such the appeal stands dismissed with no order as to costs.